

PROPOSED DECISION

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Ratesetting
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Decision PROPOSED DECISION OF ALJ MOOSEN (Mailed 10/31/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Golden State Water Company on behalf of its Bear Valley Electric Service Division (U913E), for Pre-Approval of Power Purchase Agreements with EDF Trading North America, LLC, Pre-Approval of Power Purchase Agreements with Shell Energy North America (US) L.P., Authority to Recover Costs, Authority to Establish Memorandum Account, and Alternative Pre-Approval Process for Future Power Purchase Agreements.

Application 13-06-018
(Filed June 28, 2013)

DECISION ON BEAR VALLEY ELECTRIC SERVICE DIVISION APPLICATION APPROVING AN EXECUTED MASTER AGREEMENT, PRE-APPROVING POWER PURCHASE AGREEMENTS AND INITIATING PHASE 2

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ATTACHMENT 1

**DECISION ON BEAR VALLEY ELECTRIC SERVICE DIVISION
APPLICATION APPROVING AN EXECUTED MASTER AGREEMENT,
PRE-APPROVING POWER PURCHASE AGREEMENTS AND
INITIATING PHASE**

Summary

Golden State Water Company, on behalf of its Bear Valley Electric Service Division (BVES), filed an application for pre-approval of four proposed Power Purchase Agreements (PPAs) with EDF Trading North America, LLC (EDF) and Shell Energy North America (US) L.P. (Shell).¹ The BVES Application also requested approval of an executed, enabling Master Agreement with EDF. BVES also requested authority to submit final, executed agreements by Advice Letter utilizing a price benchmark methodology to determine price reasonableness. BVES requested that the Commission create a two phase proceeding. Phase 1 would consider pre-approval requests for the EDF and Shell proposed PPA terms and conditions approval of an executed EDF Master Agreement, a confidential benchmark price methodology and a memorandum account to track unrealized gains and losses. Phase 2 would consider a proposed alternative approval process for future PPAs, except those for Renewable Portfolio Standard products. BVES' application was unopposed.

This decision grants BVES' Phase 1 requests on a one-time, non-precedential basis and orders initiation of Phase 2. This decision also grants the BVES Motion for Leave to File Confidential Direct Testimony and

¹ *Application of Golden State Water Company on behalf of its Bear Valley Electric Service Division for Pre-Approval of Power Purchase Agreements with EDF Trading North America, LLC, Pre-Approval of Power Purchase Agreements with Shell Energy North America (US) L.P., Authority to Recover Costs, Authority to Establish Memorandum Account, and alternative Pre-Approval Process for Future Power Purchase Agreements* on June 28, 2013. (BVES Application.)

Appendices. The assigned Administrative Law Judge will consider and rule on the BVES Motion for Entry of Proposed Protective Order in Phase 2, as applicable.

1. Procedural History and Resolution of Outstanding Motions

The Bear Valley Electric Service (BVES) Application was filed on June 28, 2013. No protests were filed and no evidentiary hearings were held.

The record in this proceeding is composed of all documents filed and served in this proceeding and the exhibits identified and admitted by this decision, as shown in Attachment 1.

BVES filed a Motion for Leave to file the executed EDF Trading America, LLC (EDF) Master Agreement, the EDF Annual Baseload Confirmation, the EDF Call Option Confirmation, the Shell Energy North America (US) L.P. (Shell) Seasonal Baseload Confirmation and the Shell Resource Adequacy (RA) Confirmation as confidential appendices to its Application.² BVES has shown that Appendices E, F, G, H and I to the Application meet the requirements for confidentiality protection of energy procurement contracts under Decision (D.) 06-06-066 standards. Good cause having been shown, BVES' request is granted. BVES also moved for entry of a proposed protective order. Since there were no other active parties to the proceeding, this request was unnecessary in Phase 1 and therefore is denied as moot. BVES may renew this motion if appropriate in Phase 2.

² *Motion of Bear Valley Electric Service for Leave to File Confidential Appendices to Its Application for Pre-approval of Power Purchase Agreements, and Entry of Proposed Protective Order*, filed June 28, 2013 supported by Attachment 2, Declaration of Keith Switzer, Vice President of Regulatory Affairs for Golden State Water Company, including D.06-06-066 Matrix.

In addition, BVES submitted its Direct Testimony, Volume 2, in both public and redacted versions. Volume 2 included the most recent non-binding price quotes from EDF and Shell as well as a description of proprietary commercial market information and calculations using the proprietary data to demonstrate BVES' proposed benchmark price methodology. Updates to the confidential prices and other confidential information were provided to the Commission on October 10, 2014.³ We agree that disclosure of the proposed benchmark calculation methodology and commercially-available market information would jeopardize BVES' negotiations of the final prices associated with the EDF and Shell confirmation approved by today's decision. Therefore, we grant BVES' motion for confidentiality protection for the redacted portions of Volume 2 and the recent updates to that information.⁴ These confidential exhibits are noted as such in Attachment 1 to this decision.

2. Need for Energy

BVES provides electric service in the communities surrounding Big Bear Lake, a resort community in the San Bernardino Mountains, northeast of the Los Angeles area. Specifically, BVES serves approximately 21,500 full-time and part-time residents, and approximately 1,400 commercial, industrial or public authority customers. BVES also provides service to two ski resorts (Bear Mountain and Snow Summit) in its territory. BVES stated that the maximum winter peak load was set in 2012 at approximately 45 megawatts (MW). Typically, the average peak load has been about 41 MW, including a coincident,

³ October 10, 2014 updates to BVES-11 are entered into evidence as BVES-21 (confidential) and noted in Attachment 1.

⁴ BVES-21 (confidential).

non-firm load of about 5-8 MW from BVES interruptible load at several very large accounts. BVES' interruptible load can be as high as 13.5 MW.

Accordingly, BVES is a winter peaking utility.

In the summer months, the load in BVES service area ranges from a minimum of about 11 MW (early summer mornings) to a maximum of approximately 24 MW (weekend holiday, mid-morning and late evenings). The BVES winter peak load typically occurs when tourism peaks and snowmaking machines at the ski resorts are operating.

BVES' existing power resource system is comprised of an 8.4 MW, natural gas-fired, peaking power plant, called the Bear Valley Power Plant consisting of seven 1.2 MW internal combustion engines; 205 miles of overhead lines; 54 miles of underground lines, and 13 substations. In addition to facilities it owns and operates, BVES' energy resources include purchased power. BVES currently has a master power purchase contract with Shell and confirmation agreements for energy products which have been approved by the Commission.⁵ Beginning in 1996, BVES began purchasing its energy requirements in the unregulated wholesale market. Since that time, BVES has secured energy primarily through long-term Power Purchase Agreements (PPAs) from third party providers, plus spot and California Independent System Operator (CAISO) market purchases.

BVES Witness Drabant described the BVES Integrated Resource Plan (IRP) and Procurement Process in detail.⁶ The BVES IRP for 2012 through 2017 was

⁵ This master power purchase contract and four confirmations were approved by the Commission in D.09-05-025.

⁶ BVES-10 Volume 2, Direct Testimony (redacted), Chapter 1, Testimony of Tracey Drabant. Non-confidential summary information based upon her testimony was included in BVES' Application at pages 5 through 9.

included with the BVES Application.⁷ In summary, the IRP determined an optimum resource mix, a strategy for compliance with BVES' regulatory procurement obligations including RA requirements, greenhouse gas emission limits and consistency with the CAISO's marketplace. Witness Trabant testified more specifically that the primary goals of the IRP were to: 1) identify an optimum mix of baseload, intermediate and peaking capacity necessary to meet BVES' future retail load requirements at the lowest possible cost, and 2) determine how to meet California's policies in the Energy Action Plan II regarding the loading order, including how to meet BVES' renewable energy obligations.⁸

Based in the results of the IRP, BVES determined its forecasts, available resources and further need for the products it proposed to purchase as shown by product in the summary table shown in Section 4, below. Specifically, the IRP resulted in a need for: (a) an annual base load requirement, which it proposes to be met with EDF Agreement Product 1; (b) a peak season base load requirement, to be met with EDF Agreement Product 2; (c) peaking capacity, which BVES plans to meet with its existing seven-unit 8.4 MW internal combustion facility or physical call option deliveries;⁹ (d) intermediate energy requirements to be met with Shell agreement Physical Call Option Product; and (e) RA requirements to be met with the Shell RA Capacity agreement Product 4.¹⁰

⁷ BVES Application, Appendix B.

⁸ Witness Trabant, BVES-6, Chapter IV.

⁹ The Bear Valley Power Plant was granted a certificate of public convenience and necessity in Decision (D.) 03-07-005 and began commercial operations on January 1, 2005. BVES-10, Witness Drabant, Direct Testimony (redacted) at page 9.

¹⁰ BVES-10, Witness Drabant, Direct Testimony (redacted) pp. 1-13.

BVES did not propose a new energy contract product to meet its resource planning needs for peaking capacity. Instead, BVES proposed to rely on its 8.4 MW existing power plant. However, under the daily physical call option agreement with Shell, a strike price of \$75/MWh for on peak volumes will provide price cap protection for BVES against price spikes and load requirement surges that could create significant increases in power supply costs.¹¹

3. Integrated Resource Plan, Request for Proposals, Bid Evaluation and Contract Negotiation

BVES presented its IRP for 2012 – 2017 in its Application¹² which identifies BVES' resource requirements by resource type and renewable and non-renewable requirements. None of the contracts under consideration in this proceeding are for renewable resource procurement.¹³ The IRP is described as the primary document used in planning, evaluating and acquiring generation resources to meet the forecasted energy requirements of BVES' retail customers. With the exception of its 8.4 MW peaking generation, BVES relies exclusively on purchase power by contract or spot purchases from the CAISO markets for energy procurement to meet the need for baseload, seasonal baseload, intermediate, and peaking energy and RA capacity.

BVES' testimony provided detailed support for its demand and energy requirements which were the basis for the Request for Proposals (RFPs) to solicit each resource by type, duration and quantity. Once its future resource

¹¹ BVES-10, Witness Drabant, Direct Testimony (redacted) at page 10.

¹² BVES Application, Appendix B.

¹³ BVES submitted Advice Letter No. 277-E on February 7, 2013, seeking approval of a contract to purchase sufficient RECs to satisfy its RPS requirements through 2023. BVES' acquisition of

Footnote continued on next page

requirements were identified, that is, 1) an annual baseload product, 2) a seasonal baseload product for the months of November, December, January and February and 3) products/options to manage price risk that would cap BVES' energy costs for intermediate/peaking energy needs, an RFP was developed and issued. The RFP was sent to approximately 140 potential suppliers seeking responsive bids.¹⁴ Eleven responses were received, six of which offered non-renewable energy. Of these six responses, five responded to at least all requested portions of the RFP. We have reviewed but will not disclose the Bid Responses and BVES' bid evaluation results for each product.¹⁵

In addition, BVES issued a separate RFP asking for RA capacity which was sent to approximately 104 potential respondents.¹⁶ Four marketers submitted proposals for the RA capacity product. The evaluation of the responses identified the Shell response as the least-expensive alternative which met all of BVES' requirements including an offer of a firm RA product. We have reviewed but will not reveal the bids received in response to the RFP for RA and BVES' bid evaluation process.¹⁷

The bid evaluation process set weighting factors for a number of key product, performance capability and financial characteristics. BVES' testimony outlines the detailed quantitative and qualitative factors evaluated for each bid as

RECs will not affect physical energy purchases. BVES-10, Direct Testimony (redacted), Volume 2, Witness Drabant at page 13.

¹⁴ BVES-3, Firm Power RFP, Application, Appendix C.

¹⁵ BVES-11 (confidential,) Volume 2, Direct Testimony, Witness Drabant, pp. 15 through 27.

¹⁶ BVES-4, Resource Adequacy Capacity RFP, Application, Appendix D.

¹⁷ BVES-11 (confidential,) Volume 2, Direct Testimony, Witness Drabant Testimony, pp. 28 through 30.

well as the elements and analysis leading to the identification of EDF and Shell as the winning bidders.¹⁸

4. Purchased Power Products and Associated Agreements

The BVES Application requested pre-approval of four agreements resulting from the RFP, bid evaluation process and subsequent negotiations described above. BVES negotiated three agreements with EDF: 1) the terms and conditions in an Edison Electric Institute (EEI) Master Power Purchase and Sale Agreement, as amended, with EDF which acts as an enabling agreement and is fully executed; 2) terms and conditions (excluding price) of a confirmation for annual baseload energy (EDF Annual Baseload Confirmation), and 3) terms and conditions (excluding price of a confirmation for a daily physical call option with EDF (EDF Call Option Confirmation).¹⁹ BVES also negotiated terms and conditions for two agreements with Shell: 1) terms and conditions (excluding price) of a confirmation for seasonal baseload energy (Shell Seasonal Baseload Confirmation); and 2) terms and conditions (excluding price) of a confirmation for RA capacity (Shell RA Capacity Confirmation) under an existing master Power Purchase and Sale Agreement with Shell.²⁰ BVES refers to these “confirmations” collectively as PPAs throughout the BVES Application. BVES

¹⁸ BVES-11 (confidential,) Volume 2, Direct Testimony Witness Drabant, pp. 15-30.

¹⁹ These contracts were attached as Confidential Appendices E, F and G to the BVES Application in this proceeding. Appendices E, F and G were admitted into evidence above as BVES-5 (confidential), BVES-6 (confidential) and BVES-7 (confidential), respectively.

²⁰ The Shell Master Power Purchase and Sale Agreement was approved by the Commission in D.09-05-025 and remains in full force and effect. The two Shell contracts were attached as Appendices H and I to the BVES Application in this proceeding. Appendices H and I were admitted into evidence above as BVES-8 (confidential) and BVES-9 (confidential,) respectively.

seeks approval of the form of the PPAs.²¹ We reviewed but will not disclose the four Confidential PPAs and the EDF Master Agreement beyond the following table which summarizes the public terms of the PPAs for the four products, exclusive of prices.

| Bear Valley – EDF and Shell Agreements²² | | | |
|--|-----------|--|--------------------------|
| Resource Type | Term | Capacity | Expected Deliveries |
| Product 1. Annual Baseload | | | |
| Firm Energy | 59 months | 12 Megawatts (MW) | 24/7 annual |
| Product 2. Seasonal Baseload | | | |
| Firm Energy | 36 months | 7 MW Dec., January, February 5 MW November | 24/7 annual |
| Product 3. Peak Call Option | | | |
| Firm Energy (Daily Physical Call Option) | 36 months | Up to 7 MW January through March Up to 3 MW April through October | 16 MWh/day 16 MWh/day |
| Product 4. System RA Capacity | | | |
| Firm, shaped | 59 months | Monthly forecasted requirements varying by month and year | Varying |

²¹ BVES Application at 13-15.

²² Application at 13-15.

4.1. Confidential Benchmark Prices Calculation Methodology for each PPA and Requested Reasonableness Review Process

BVES requested pre-approval of a process for determining a confidential benchmark price to be used in future reasonableness reviews of each final, executed EDF Annual Baseload Confirmation, the EDF Call Option Confirmation, the Shell Seasonal Baseload Confirmation and the Shell RA Capacity Confirmation (collectively, PPAs). We reviewed the proposed process for determining a benchmark price for each confirmation which was set forth in BVES Direct Testimony (Confidential) Volume 2.²³ We also reviewed Chapter 3 described the process for which approval is requested and provided calculations for each of the individual PPAs for which BVES seeks preapproval.

Utilizing the proposed benchmarks for the relevant periods and the most recent “refresh” bids offered by EDF and Shell for each of the four contracts under review in this proceeding, BVES presented calculations of benchmarks, by contract.²⁴ We reviewed but will not disclose this testimony describing the proposed benchmark calculation methodology and resulting estimated benchmarks for each contract.

BVES proposed that should the Commission adopt this methodology to establish a benchmark price for each PPA, BVES would enter into final negotiations with EDF and Shell to obtain the best possible prices for each PPA.

²³ BVES-11 (confidential), Volume 2, Direct Testimony, Witnesses Joseph Phalen and Keith Switzer, Chapter 3, pp. 30-40.

²⁴ BVES-15 (confidential), Calculations of Benchmark Prices. The full calculations used to derive each benchmark were likewise presented in Appendix D to BVES-11 (confidential.)

The resulting benchmark prices would be compared to the final, executed confirmations. If the negotiated and executed PPA prices are equal to or less than the benchmark price, the price of such confirmation would be deemed per se reasonable and the related costs would be recoverable without further reasonableness review. In such case, BVES requested that the regulatory process would be completed by a Tier 1 Advice Letter compliance filing of the executed PPA.

If BVES should execute one or more PPAs at a price above the benchmark price, BVES requests authority to file such PPA through a Tier 3 Advice Letter filing and request authority to recover costs above the benchmark price. To the extent the Commission approves, in whole or in part, BVES' request to recover costs above the benchmark price, such costs (plus all costs related to the benchmark price) would be authorized for recovery. If the Commission ultimately denies BVES' request for recovery of costs related to prices above the benchmark price, BVES asserted that it should nevertheless have authority to recover costs based upon the benchmark price, provided that the other terms and conditions of the PPA are consistent with those pre-approved by the Commission.

The result of the BVES proposal is that the costs up to and including the benchmark price would be per se reasonable whether the final contract price was equal to the benchmark or not. If BVES executes a PPA at above benchmark prices, then only those costs above the benchmark price would be subject to an after-the-fact reasonableness review triggered by the filing of BVES' Tier 3 Advice Letter.²⁵

²⁵ BVES-10, pp. 39-40. BVES Application, pp. 28-29.

5. Reasonableness Issues

The standard of review for determining the reasonableness of BVES' request for approval of the EDF Master Agreement and preapproval of the four PPAs is that of a prudent manager. Therefore, we must determine whether the management actions taken up to and including negotiating the PPAs were reasonable given what the utility knew or should have known at the time that the managerial decision was made, not how the decisions hold up in light of future developments. We must also determine whether the proposed price benchmark methodology and reasonableness review process for the final price agreements is just, reasonable and in the public interest.

We grant BVES' request for pre-approval of the EDF Master Agreement and preapproval of the four PPAs (exclusive of price). In doing so, we rely on the fairness, transparency, competitive robustness and prudent bid evaluation process leading to these agreements, as well as review of the terms and conditions presented for approval. The record shows that BVES' IRP provided a solid foundation for calculation of its load forecast over the contract periods, for determining a prudent procurement strategy for a reliable, least cost resource mix and implemented reasonable risk management strategies that also met the regulatory requirements for RA and preferred loading order, greenhouse gas emission reduction and retail service obligations. BVES' public testimony and supporting documentation, as well as the confidential material presented in this proceeding, demonstrates that it developed effective RFPs and conducted a fair and robust bid solicitation process, performed necessary due diligence in its bid evaluation process and negotiated reasonable terms for the proposed PPAs. Based on the information available to BVES at the time of negotiating the EDF Master Agreement and the EDF and Shell Confirmations, exclusive of price, the

applicant has met the standard of a prudent manager. We conclude that the resulting EDF Master Agreement should be approved and the EDF and Shell Confirmations are reasonable and should be pre-approved. This authority is granted with the condition that further reasonableness reviews by Advice Letter filings will occur. Price reasonableness and consistency of the final, executed contracts with today's decision will be undertaken at that time. Once that occurs, authority to recover actual costs of each agreement approved will be given.

6. Price Reasonableness Benchmark and Review Process (Phase 1)

6.1. Discussion

We have reviewed, but will not disclose, the proposed price reasonableness benchmark methodology, the proposed source for the commercially-available but proprietary and confidential energy market information and the illustrative calculations presented in BVES' confidential testimony and confidential prices for the EDF and Shell Confirmations above. We have also reviewed the portion of the prepared testimony which described BVES' determination of the forecasted need for energy. Finally, we have considered our ratemaking practices with respect to preapproval of contracts and recovery of costs through a reasonableness review process, specifically in the context of the Renewable Portfolio Standard (RPS) expedited market benchmark process decision, D.09-06-050.²⁶ The EDF and Shell PPAs under consideration in this proceeding relate to conventional generation, not renewable resources. However, some of the fundamental issues that arose in that proceeding arise here

²⁶ D.09-06-050, *Decision Establishing Price Benchmarks and Contract Review Processes for Short-Term and Bilateral Procurement Contracts for Compliance with the California Renewables Portfolio Standard*, issued June 19, 2009.

as well such as the tradeoffs between the use of benchmarks based on proprietary market data in an expedited review process and the need for transparency and other ratepayer protections. In approving BVES' proposal, we weighed the benefits of expediency and the value of accurate, available market information for comparison to the final procurement contract prices and terms against the burdens of lack of transparency resulting from using proprietary, commercial data and the residual complexity of individual contract review by future Advice Letters.

The Commission's discussion of these issues in D.09-06-050 was instructive for examining whether BVES included the necessary and sufficient components for a finding that its proposed Price Reasonableness Benchmark process and related Advice Letter regulatory review process are reasonable. In the RPS procurement context, we found that a price reasonableness benchmark was necessary for a fast-track approval process. In that case, we concluded that relevant market information was the most important determinant of how to develop the price benchmark. This element is equally crucial in this case. As described above and in confidential testimony, BVES asked for approval of its chosen commercially-available source for data and to support analysis when evaluating the reasonableness of its future Tier 1 or Tier 3 Advice Letter filings of the final, negotiated PPAs. We note that no parties intervened to object to this proposal. Given that BVES is a small utility relative to the three largest investor-owned utilities in California and the need for a meaningful measure of reasonableness by which to judge the final negotiated prices in a relatively expedited Advice Letter process, the use of the specific, proprietary data is reasonable at this time. We approve this request and direct BVES to provide the most recent, relevant commercially-available market forecasts for energy and

capacity together with the final executed, negotiated prices for each PPA approved in today's decision.²⁷ In doing so, we approve the source for the market data to be used, the proposed benchmark calculation methodology and the BVES proposed regulatory review process. We find that these components taken together are just and reasonable for this round of procurement agreements under these circumstances. As such, costs incurred at or below the benchmark will be per se reasonable. We will not adopt a specific dollar amount per product price benchmark in this proceeding but will consider the ability to do so in Phase 2 for BVES' future procurement contract review.

Today's approval of the price reasonableness benchmark and regulatory review process is on a one-time, non-precedential test basis. We continue to be concerned that the value of transparency in regulatory oversight by use of publicly available, relevant market information is again eclipsed by the reliance on confidential market data and the need to protect energy procurement contract information. Confidentiality of particular contract prices must be preserved (see D.06-06-066), but public disclosure of some information about prices is both possible and desirable. While we grant BVES' request to maintain confidential the commercial market information and its contract prices in this case, we will examine this issue further in Phase 2 as applied to BVES' future procurement contracts.

In the RPS case, we directed staff to consider whether the accepted industry practice of disclosing a 30-day rolling average of benchmark prices or

²⁷ In D.09-06-050, we distinguished between "very short contracts" of one-month to 48 months duration and "moderately short-term" contracts of four to 10 years duration. Since we are adopting the methodology proposed by BVES herein which is tailored to each product and term presented in the subject PPAs, it is unnecessary to make those distinctions in this case.

similar averaged presentation would provide a relevant and useful method of making price data available to the public. We will review this and other proposed methods of increasing transparency and simplicity on a going forward basis in Phase 2 of this proceeding, as discussed below.²⁸ We will also look to the experience with BVES' Advice Letter filings for the EDF and Shell PPAs pre-approved today to inform review in the Phase 2 for BVES' procurement contracts going forward.

We find that today's decision results in an acceptable level of ratepayer risk with respect to the final, negotiated prices to be reviewed by Advice Letter. If the final, negotiated agreements represent costs well above the benchmark price derived by the benchmark method adopted today, interested parties will have an opportunity to protest and participate in review of those costs when identified through the Tier 3 Advice Letter process. In addition, as BVES notes, the Commission has additional oversight and regulatory flexibility in setting retail rates to recover power costs booked into BVES' Power Purchase Adjustment Clause balancing account which is reviewed in BVES' general rate case proceeding.²⁹ This will allow the Commission to adjust retail rates to avoid any rate shock to BVES' retail customers associated with any precipitous increase in procurement costs. BVES has persuaded us that these measures will likely be unnecessary given the prudent steps BVES has taken to reduce the potential for future significant price hikes for BVES customers by the procurement strategy implemented through the EDF and Shell PPAs.

²⁸ D.09-06-050 at page 21 and Conclusion of Law 6 at page 35.

²⁹ BVES-10 at page 14.

7. Memorandum Account

BVES stated that it believes for accounting purposes that the EDF and Shell PPAs qualify as derivative instruments under Statement of Financial Accounting Standards (SFAS) No. 133, which in turn requires BVES to record derivatives on its balance sheet as assets and liabilities, and to measure those instruments at the fair market value. Applying SFAS No. 133 to the PPAs would mean recognizing unrealized gains and unrealized losses on an outstanding purchased power contract which would affect reported earnings, even though when the power contract is finally settled any unrealized gains or losses recognized under SFAS No. 133 are reversed.³⁰

There would be no public benefit if BVES had to recognize unrealized gains or losses on its balance sheet during the life of the PPA agreements related to the cost of energy and capacity which will be delivered to retail customers in the remaining years of the agreement. The relief sought by this request is virtually the same relief we granted in D.09-05-025 with respect to PPAs in effect at the time with Shell and more recently in D.11-06-030 with respect to a PPA with the County Sanitation District No. 2 of Los Angeles County. The memorandum accounts authorized by those decisions do not include the contracts adopted by today's decision. Therefore, BVES requested authority to track the unrealized gains and unrealized losses on the EDF Annual Baseload Confirmation, the EDF Call Option Confirmation, the Shell Seasonal Baseload Confirmation and the Shell RA Capacity Confirmation in a new, non-interest bearing memorandum account.

³⁰ BVES-10, pp. 49-51, Volume 2, Direct Testimony, Witness Gladys Farrow, Chapter 5.

A memorandum account would allow BVES to track, solely for financial reporting purposes during the life of the agreement, any unrealized gains or losses on the outstanding balance of the contract and record either an offsetting “refund” to ratepayers of an imputed market gain or an under collection of an imputed market loss. During contract performance, BVES will record and recover only its actual costs under the terms of the contract for energy delivered to retail customers. The memorandum account will be reversed and no additional costs will be recovered from (or refunded to) ratepayers.

We find BVES’ request is reasonable and grant BVES’ request for a memorandum account. BVES must file a Tier 1 Advice Letter proposing the specific language for the memorandum account with the Commission’s Energy Division.³¹ Just as was done in D.09-05-025, we find no reason to make the memorandum account a blanket authority: BVES must file for authority before we allow subsequent energy or capacity procurement contracts to be included in the account.

8. Phase 2 – BVES’ Proposal for an Alternative Approval Process for Future Procurement Agreements

BVES’ Application included a request for a Phase 2 in this proceeding to consider its proposed alternative approval process for future procurement contracts. Citing the burdens and costs of filing an Application such as the application initiating this proceeding, BVES proposed that an alternative process be approved that BVES claims would be: 1) more streamlined and cost-effective than relying solely upon the application process, 2) increase Commission

³¹ General Order 96B, Energy Industry Rules, § 5.1(1).

oversight of BVES' procurement process, 3) increase accountability and transparency of BVES' power procurement process and 4) eliminate the need for after-the-fact reasonableness review of PPAs for those procured through the Commission-approved process. (Application at page 33.)

BVES lists the following as the key components of the proposal:

- 1) Establish a Procurement Review Group (PRG);
- 2) Submit annual IRP to PRG for review and feedback;
- 3) Submit summaries of power procurement bids and analyses to PRG for review and feedback;
- 4) Consult with and update PRG during procurement/negotiation process;
- 5) Submit the final form of the PPA, price refreshes from proposed counterparties, and proposed process to establish a benchmark price for PRG review and feedback; and
 - a. Submit the final form of the PPA most recent price refreshes, and proposed process to establish the benchmark price to the Commission for approval using a Tier 3 Advice Letter process;³² or
 - b. Following issuance of an approving resolution by the Commission, file executed PPAs via Tier 1 Advice Letter compliance filing.³³

The Commission's current practice is to approve contracts for the large electric utilities only after a review by a formalized procurement review group process where competent interested parties have an opportunity to review the entire procurement proposal and the utility's analytical review process. This process provides intervenors with access to confidential information and prompt

³² Application at page 39.

³³ Application at page 33.

feedback to the utility if the intervenors are concerned about the proposed transactions. There is no formal procurement review group process for BVES.

BVES' alternative review process includes the use of price benchmarks in the context of a proposed PRG review of future procurement agreements. As noted above in Section 5.1, the Commission has considered use of price benchmarks in the context of expedited review and approval processes for RPS agreements. That decision described the trade-offs between the use of confidential market information versus greater transparency, expedited and relatively simpler review through the benchmark comparison standard of reasonableness versus greater ratepayer protection through after-the-fact reasonableness reviews of individual contracts' terms, conditions and prices. The relative value of each of these objectives is raised by BVES' proposal. However, BVES' proposal is distinct from the RPS context precisely because the BVES proposal applies to non-renewable procurement arising from its IRP and need assessment, among other things. In addition, BVES' smaller size relative to the largest three investor-owned utilities that are not exempt from the Long-Term Procurement Process that includes establishment of PRGs and a number of other filing, review and approval processes is another dimension that will need consideration.

Accordingly, it will be important to develop a full record on the BVES proposal to consider how to meet the objectives of simplicity, transparency and accountability together with a reduction in the cost burden, delay and uncertainty risk attendant in the application process for BVES future procurement activity. Therefore, by this decision we initiate Phase 2 to consider the proposed BVES Alternative Approval Process.

We note that the proposal to require submittal of Tier 3 Advice Letters for contracts that exceed the benchmark price raises the concern that should this occur frequently, the alternative process will require individual contract review (albeit for the subset of costs above the pre-approved benchmark) and a potential for an adversary proceeding on par with review under a full application process. We will look to the experience gathered with the price benchmark process approved today to inform our consideration of the issues in Phase 2. In order to have the benefit of information on the outcome of the Advice Letter filings BVES makes in compliance with today's decision. The assigned Administrative Law Judge (ALJ) will set a prehearing conference in Phase 2 as soon as is practicable after the receipt and disposition of the Advice Letters implementing today's decision.

As discussed above in Section 6, Phase 2 will include comparison of the BVES proposal with the possibility of adopting a benchmark methodology that utilizes a "dollar amount per product" calculation rather than reliance upon proprietary market data as well as other methods to allow for more transparency in deriving the benchmark. Parties will also be asked to address the relative merits of the BVES alternative process versus providing for filing, review and approval of BVES' IRP and resulting procurement activities in its General rate case where BVES' procurement costs booked to its Power Purchase Adjustment Clause balancing account are reviewed and approved for inclusion in rates.

9. Comments on Proposed Decision

The proposed decision of ALJ Moosen in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 19, 2014, by BVES.

10. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Irene K. Moosen is the assigned ALJ in this proceeding.

Findings of Fact

1. Applicant, Bear Valley Electric Service, is a public utility subject to the jurisdiction of this Commission.
2. In its Motion for Leave to File Confidential Material under Seal filed with its initial application, BVES sought confidential treatment of Application Appendices E, F, G, H and I as well as redacted portions of Volume 2 Direct Testimony.
3. BVES filed the Declaration of Keith Switzer in support of its Motion for Leave to File Confidential Material under Seal.
4. BVES prepared an IRP for the 2012 - 2017 periods to serve retail customers.
5. BVES issued a RFPs for energy and RA capacity, received several responses and conducted a detailed analysis and evaluation process to choose the winning bidders.
6. BVES negotiated two procurement agreements with EDF: 1) terms and conditions (excluding price) of a confirmation for annual baseload energy (EDF Annual Baseload Confirmation), and 2) terms and conditions (excluding price of a confirmation for a daily physical call option with EDF (EDF Call Option Confirmation.)
7. BVES negotiated terms and conditions for two agreements with Shell: 1) terms and conditions (excluding price) of a confirmation for seasonable baseload energy (Shell Seasonal Baseload Confirmation) and 2) terms and conditions (excluding price) of a confirmation for RA capacity (Shell RA Capacity Confirmation) under an existing master Power Purchase and Sale Agreement.

8. BVES executed a final EEI Master Power Purchase and Sale Agreement, as amended, with EDF.

9. BVES used commercially-available but proprietary relevant market information data to develop a price reasonableness benchmark and proposed that this be used as the standard to judge the final, executed PPAs for which it sought pre-approval in this proceeding.

10. In D.09-06-050, the Commission stated that relevant market information was the most important determinant of how to develop the price benchmark, in that case, for reviewing Renewable Portfolio Standard product procurement agreements.

11. In D.09-06-050, the Commission found that a price reasonableness benchmark was necessary for a fast-track approval process.

12. SFAS No. 133 requires BVES to recognize unrealized gains or losses on the contract when the contract is marked to market for financial reporting.

13. A non-interest bearing memorandum account would recognize refunds or under collections offsetting the unrealized gains or losses for financial reporting purposes.

14. A non-interest bearing memorandum account would offset unrealized gains or losses to stabilize financial reporting.

15. BVES requested that the Commission initiate a Phase 2 of this proceeding to review its detailed alternative approval process for future power procurement contracts.

Conclusions of Law

1. The BVES Motion to file the Application Appendices E, F, G, H and I and retain confidential treatment of the redacted portions of Volume 2, Direct Testimony under seal has stated good cause and should be granted.

2. The record in this proceeding is composed of all documents filed and served in this proceeding and the exhibits identified and admitted by this decision, as shown in Attachment 1 to this decision. Exhibits BVES-1 through BVES-21 (confidential) are admitted into evidence.

3. The EDF Master Agreement is reasonable and should be approved.

4. The four PPAs as represented by the confirmations presented evidence are reasonable and should be pre-approved subject to the condition that BVES will file either a Tier 1 or Tier 3 Advice Letter to request recovery of its costs later determined reasonable by Advice Letter filing after final prices are negotiated and evaluated against the adopted benchmark price derived by the methodology we adopt today.

5. The Phase 1 Price Reasonableness Benchmark Methodology and Review Process proposed by BVES are reasonable and should be authorized on a non-precedential basis. Costs incurred at or below the benchmark derived by this method will be per se reasonable.

6. A non-interest bearing memorandum account reasonably offsets unrealized gains or losses created by the financial reporting impacts of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities."

7. The public version of the confidential Volume 2, Direct Testimony was reasonably redacted to protect confidential market-price data.

8. It is reasonable to allow BVES to use a non-interest bearing memorandum account to offset the unrealized gains or losses attributable to the application of SFAS 133 to the Shell and EDF agreements and no costs recorded to this account may be recovered from or refunded to ratepayers.

9. Phase 2 of this proceeding should be initiated to review the Bear Valley Service Electric proposed Alternative approval process for future power

procurement contracts. The issues posed in the text of this decision should also be included in the scope of Phase 2.

O R D E R

IT IS ORDERED that:

1. Bear Valley Electric Service's Motion for Leave to File Confidential Material Filed under Seal is granted. Exhibits BVES-5, BVES-6, BVES-7, BVES-8, BVES-9, BVES-11, BVES-12, BVES-13, BVES-14, BVES-15, BVES-16, BVES-17, BVES-18, BVES-19, BVES-20 and BVES-21 of Application 13-06-018 shall remain under seal for three years and shall not be made accessible or disclosed to anyone other than the Commission and its staff except on the further order or ruling of the Commission, the assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, the Chief ALJ, or the ALJ then designated as Law and Motion Judge.

2. If Bear Valley Electric Service believes it is necessary to keep the confidential data in the Exhibits listed in Ordering Paragraph 1 above under seal for an additional period, Bear Valley Electric Service shall file a new motion to file confidential information under seal at least 30 days before the expiration of this grant of confidentiality.

3. The EDF Trading North America, LLC Master Agreement is approved.

4. The EDF Trading North America, LLC and Shell Energy North America, L.P. Power Purchase Agreements with Bear Valley Electric Service are pre-approved subject to filing of the final, executed agreements and approval by Advice Letter.

5. The Phase 1 Price Reasonableness Benchmark process is approved for use in review of Bear Valley Electric Service's filed Advice Letters for approval of the final, executed Power Purchase Agreements pre-approved in today's decision.

6. Golden State Water Company's Bear Valley Electric Service Division may file a Tier 1 Advice Letter to recover the actual costs of energy and capacity delivered to retail customers pursuant to the Shell Energy North America (US) L.P. or EDF Trading North America, LLC agreements pre-approved today if the final, executed agreements are consistent with today's decision and the final, executed agreement prices are equal to or lower than the price reasonableness benchmark calculated using the methodology adopted in this decision. If the prices in the final, executed agreements are equal to or below the properly calculated price reasonableness benchmark, those prices will be reasonable per se.

7. Golden State Water Company's Bear Valley Electric Service Division may file a Tier 3 Advice Letter to recover the actual costs of energy delivered to retail customers pursuant to the Shell Energy North America (US) L.P. or EDF Trading North America, LLC agreements pre-approved today if the final, executed agreements are consistent with today's decision and the final, executed agreement prices are greater than the price reasonableness benchmark calculated using the methodology adopted in this decision.

8. Golden State Water Company's Bear Valley Electric Service Division shall establish a non-interest bearing memorandum account to record refunds or under-collections to offset the unrealized gains or losses of the Shell Energy North America (US) L.P. and the EDF Trading North America, LLC agreements created by the financial reporting impacts of the Financial Account Standards Board's Statement of Financial Accounting Standards No. 133, "accounting for

Derivative Instruments and Hedging Activities.” Golden State Water Company’s Bear Valley Electric Service Division shall file a Tier 1 Advice Letter, pursuant to General Order 96B, Electric Industry Rules, § 5.1(1).

9. Phase 2 of this proceeding is initiated. The assigned Administrative Law Judge shall set a prehearing conference in Phase 2 as soon as practicable after the final disposition of the Advice Letter filings authorized in today’s decision.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT 1

| Exhibit Number | Description |
|-------------------------------|---|
| BVES-1 | Application, Appendix A – Summary EDF & Shell Confirmations |
| BVES-2 | Application, Appendix B – BVES 2012 Integrated Resource Plan |
| BVES-3 | Application, Appendix C – Firm Power Request For Proposal |
| BVES-4 | Application, Appendix D – Resource Adequacy Capacity Request For Proposal |
| BVES-5 (Confidential) | Application, Appendix E – EDF Master Agreement |
| BVES-6 (Confidential) | Application, Appendix F – EDF Annual Baseload Confirmation |
| BVES-7 (Confidential) | Application, Appendix G – EDF Call Option Confirmation |
| BVES-8 (Confidential) | Application, Appendix H – Shell Seasonal Baseload Confirmation |
| BVES-9 (Confidential) | Application, Appendix I – Shell Resource Adequacy Capacity Confirmation |
| BVES-10 | BVES Volume 2, Direct Testimony (redacted) |
| BVES-11 (Confidential) | BVES Volume 2, Direct Testimony (unredacted) |
| BVES-12 (Confidential) | BVES Volume 2, Appendix A – Levelized Cost Analysis for Seasonal Bids (EDF) |
| BVES-13 (Confidential) | BVES Volume 2, Appendix B – Levelized Cost Analysis for Seasonal Bids (Shell) |
| BVES-14 (Confidential) | BVES Volume 2, Appendix C – Detailed Analysis of Capacity Option Parameters |
| BVES-15 (Confidential) | BVES Volume 2, Appendix D – Calculations of Benchmark Prices |
| BVES-16 (Confidential) | BVES Volume 2, Appendix E – EDF Master Agreement |
| BVES-17 (Confidential) | BVES Volume 2, Appendix F – EDF Annual Baseload Confirmation |
| BVES-18 (Confidential) | BVES Volume 2, Appendix G – EDF Call Option Confirmation |
| BVES-19 (Confidential) | BVES Volume 2, Appendix H – Shell Seasonal Baseload Confirmation |
| BVES-20 (Confidential) | BVES Volume 2, Appendix I – Shell RA Capacity Confirmation |
| BVES-21 (Confidential) | BVES October, 2014 Updates to Bids and Market Forecasts |

(END OF ATTACHMENT 1)